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	1
1	IN THE UNITED STATES DISTRICT COURT
2	FOR THE DISTRICT OF MASSACHUSETTS
3	
4	CERTIFIED COPY
	In Re: PHARMACEUTICAL )
5	)
	INDUSTRY AVERAGE WHOLESALE ) MDL No. 1456
6	)
	PRICE LITIGATION ) CIVIL ACTION NO.
7	) 01-CV-12257-PBS
	)
8	)
9	HIGHLY CONFIDENTIAL PURSUANT TO PROTECTIVE ORDER
10	
11	DEPOSITION OF WILLIAM C. PEARSON
12	New York, New York
13	Friday, January 7, 2005
14	
15	Deposition of WILLIAM C. PEARSON,
16	held at the offices of Patterson, Belknap,
17	Webb & Tyler LLP, 1133 Avenue of the
18	Americas, New York, New York, pursuant to
19	Notice, before Frank J. Bas, a Registered
20	Professional Reporter and Notary Public of
21	the State of New York.
22	

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2	
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7	
	(Appearing Telephonically)
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21	ADEEL A. MANGI, ESQ.
22	

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6 1 (Time noted: 9:51 a.m.) 2 WILLIAM C. P E A R S O N, stating his 3 business address as Ortho Biotech Products, L.P., 4 430 Route 22 East, Bridgewater, New Jersey, 5 having been duly sworn by the Notary Public 6 (Frank J. Bas), was examined and testified as 7 follows: 8 EXAMINATION BY 9 MR. HOFFMAN: 10 Q. Good morning, Mr. Pearson. My name 11 is Allan Hoffman and I'm an attorney for the plaintiffs in this case. Have you ever been 12 13 deposed before? 14 Α. Yes. 15 Q. And in what -- what was the nature of 16 the litigation in which you were -- how many 17 times have you been deposed before? 18 Α. Once. 19 Q. And what was the nature of that 20 litigation? 21 It was in regards to the litigation Α. 22 with Amgen.

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	7
1	Q. With Amgen?
2	A. Yes.
3	Q. Over the license agreement?
4	A. Yes.
5	Q. Since you've been deposed before,
6	I'll just go over some ground rules, some
7	instructions to bear in mind during this
8	deposition so that we have as clear a record as
9	possible and we don't talk over each other.
10	First off, because we have a court
11	reporter who is taking down your testimony, you
12	have to give oral responses, no shrugs or nodding
13	of the head. Do you understand that?
14	A. Yes.
15	Q. Also, you're here under oath, and you
16	understand that you're susceptible to all the
17	penalties of perjury should you lie under oath.
18	Do you understand that?
19	A. Yes.
20	Q. If you don't hear a question, please
21	tell me and I'll repeat it. Is that okay?
22	A. Yes.

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	8
1	Q. If you don't understand a question,
2	please tell me and I'll rephrase it. Do you
3	understand that?
4	A. Yes.
5	Q. If at any time you feel you want to
6	take a break, just let me know, we'll stop and
7	you can get up and do whatever you need to do.
8	Is that okay?
9	A. Yes.
10	Q. Otherwise I'll assume that you've
11	heard and understood all of my questions and that
12	you've answered them truthfully. Okay?
13	A. Yes.
14	MR. HOFFMAN: Frank, let's mark this
15	as Exhibit Pearson 001.
16	(Exhibit Pearson 001, for
17	identification, Notice of Deposition.)
18	Q. Mr. Pearson, I've put before you what
19	the court reporter has marked as Exhibit
20	Pearson 001, and it's entitled Notice of
21	Deposition. Do you understand that?
22	A. Yes.

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224 1 direction from Amgen to do that. 2 Did you ever follow up on those Q. anecdotal reports? 3 4 What do you mean follow up? 5 0. I mean did you ever follow up to find 6 out whether or not they were true? 7 Well, you know, I asked the people Α. within our sales force if they were true -- and 8 9 of course, you know, again anecdotal reports -that if they were true. 10 11 Right. If you were getting reports 12 from doctors that it was being promoted that way, 13 did the doctors offer to give you any documents 14 which showed that? 15 MR. SCHAU: Objection, foundation. They didn't offer any documents to 16 Α. 17 me, no. 18 0. Did anyone from OBI ask for documents 19 which showed that? 20 MR. SCHAU: Objection, foundation. 21 Α. Did they ask? I don't know that. 22 Q. So as far as you know, the only thing

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225 1 that was done was people at OBI asked its sales 2 force to confirm whether or not that was 3 happening out in the field? 4 We heard reports from physicians that 5 it was happening out in the field. We didn't ask 6 our sales force to go out and ask those 7 questions, but we had those comments coming back -8 in. 9 Did anybody go out to those Q. 10 physicians and interview them and find out in 11 more detail what was going on? 12 Our representatives certainly talked 13 with those physicians, but we didn't send out 14 people to interview those physicians. 15 Did the knowledge that was coming 16 back from the sales force, was that -- were memos 17 drafted, were any reports drafted to provide information back to management at OBI what was 18 19 going on? 20 Α. Reports drafted? 21 Q. Yes. 22 Α. Again, we had reporting of the

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226 1 anecdotal reports, that that information came 2 back in. 3 Ο. It seems like this would have been a serious issue to OBI, if Aranesp was out there, 4 5 if Amgen is out there pushing Aranesp based on 6 its reimbursement level? 7 Α. Well, we were concerned about 8 changing the overall reimbursement methodology. 9 You know, we did not want to get into a 10 situation, talking about what we thought Amgen 11 was doing. We wanted to meet with the government 12 to change the reimbursement methodology. 13 We felt like it needed to be moved 14 away from an AWP-based reimbursement methodology. The federal government, CMS, wanted to move away 15 16 from an AWP-based reimbursement methodology. 17 were all on the same page of wanting to change 18 the system. 19 0. In what contexts were the discussions that one of OBI's options was to raise the AWP? 20 21 Α. What context? 22 Q. Was it a -- what committee was

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- 1 meeting on the issue?
- 2 A. I really don't know. It could have
- 3 been anyone. You know, it could have been
- 4 someone throwing an idea out that says okay, we
- 5 can raise AWP. A lot of ideas were put out on
- 6 the table during meetings. It doesn't mean that
- 7 they're valid ideas. It doesn't mean that those
- 8 ideas were acted upon. But you asked if those
- 9 ideas were ever raised? Yes, those ideas were
- 10 raised but they were never acted upon.
- 11 Q. Were any analysis made on those ideas
- 12 or debating of those ideas?
- 13 A. Yes, could have been. I just don't
- 14 recall specifically. But you know, we looked at
- 15 that action. We didn't act on it.
- 16 Q. Other than, I think, economic
- 17 message, did OBI believe that Aranesp had other
- 18 advantages over Procrit?
- MR. SCHAU: Objection to form.
- 20 A. I personally never believed that
- 21 Aranesp had an advantage over Procrit. I always
- 22 thought that Procrit was the best product.

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1	Aranesp was promoted based on the convenience of
2	the product with every other week dosing, but I
3	never felt like it was a better product. I
4	always felt clinically that Procrit was the best
5	product.
6	Q. You've never seen any documents that
7	Amgen's sales reps gave to physicians promoting
8	or comparing the amount of profit one could get
9	from Aranesp versus Procrit?
10	A. I could have seen documents. I would
11	hesitate to say I've never seen documents, but
12	I've never seen any corporate directives or
13	documents that have been given out by Amgen.
14	Q. What kind of documents did you see?
15	A. You know, documents that showed the
16	economic incentive on Aranesp.
17	Q. Did it look like it was created, you
18	know, by a marketing department?
19	A. No, it did not.
20	Q. It looked like it was just an an
21	individual had done it?
22	A. Yes, it did.

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232 1 these discounts and rebates, you were actually 2 getting a better economic deal than you are from 3 Aranesp? 4 Α. It depended on the situation. 5 of the time, as you can witness by looking at the 6 market share in the oncology clinics, in the 7 oncology clinics we lost substantial market 8 share. And the reason we lost substantial market 9 share was because a contractual offering from 10 Amgen on Aranesp, and Neupogen and Neulasta, was 11 a better offering than on Procrit. 12 And what were the reasons why you 0. 13 couldn't come up with a better offer than Amgen had? 14 15 Α. I'm sorry? Why we could not? 16 Q. Yes. 17 Α. Again, the total value of Procrit to 18 that practice was not as large as the total value 19 of Aranesp, Neupogen and Neulasta. 20 0. Could that have been countered by 21 giving larger rebates or discounts? 22

You could never win. If you bought

Α.

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1	\$100,000 of Procrit, and if you bought \$200,000
2	of Aranesp, Neupogen and Neulasta, if we gave a
3	5 percent discount and they gave a 5 percent
4	discount, the total value on 200,000 is greater
5	than 5 percent on 100,000.
6	If we went to 6 percent, they went to
7	6 percent. Again, the total bundle was larger.
8	You could never win it.
9	Q. So as a result of not being able to
10	win it, OBI changed its marketing strategy to
11	emphasize what?
12	MR. SCHAU: Objection, foundation.
13	Q. You said that there was a clinical
14	message. I understand that.
15	A. Right. Clinical was very important.
16	Let me go back and touch on that. We continued
17	to stress the need to sell the product first. We
18	believed that the patient was important. We
19	believed that the clinical benefit was important.
20	So we stressed that first.
21	We wanted to move away from, as much
22	as possible, from a contractual message. But

22

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1	having said that, we knew that we had to contract
2	with these clinics. We conducted other clinical
3	trials comparing Procrit to Aranesp. Some of
4	that data was recently launched in 2004 showing
5	the clinical benefits that Procrit would have
6	over Aranesp.
7	I mean if you're an oncology patient
8	and you're on chemotherapy, you want to receive
9	the best drug. We thought that Procrit was the
10	best drug for the patient, so we continued to
11	stress that throughout the clinic. With the
12	physicians, and with the nurses. We felt like it
13	was the best product.
14	Stay with me for a second, okay? I
15	heard your question.
16	We continued to contract. Okay?
17	Even though we couldn't win, we continued to try
18	to discount, to get as close as possible to meet
19	the competition. But we couldn't we could not
20	win a discounting war. We continued to meet with
21	CMS, in terms of reimbursement, to try to get the

reimbursement methodology changed.

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1	Reimbursement methodology, meeting
2	with CMS, was the primary focus. We felt like an
3	AWP AWP-based reimbursement methodology was
4	faulty. We felt like the government could save
5	money by changing the methodology.
6	CMS agreed with us. They were trying
7	to work through and resolve all those issues.
8	They're still trying to do it today.
9	In fact, in meeting with CMS, they
10	moved to what they call equitable payment. And
11	I'm sure you've read that in these documents, and
12	in functional equivalents. As we looked at
13	converting so many units of Procrit to so many
14	micrograms of Aranesp, they tried to look at the
15	clinical data to establish what an appropriate
16	conversion factor would be to offer equitable
17	payment. In fact, they established and
18	implemented functional equivalence or equitable
19	payment in the hospital marketplace, to ensure
20	that Aranesp did not have a reimbursement
21	advantage.
22	In fact, there was a lot of

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- 1 discussion about doing that in the Medicare
- 2 carrier Part B side. One Medicare carrier moved
- 3 to that. Dr. Stone out in Utah implemented the
- 4 least costly alternative. And that's what we
- 5 wanted to see them do across the system.
- In fact, that was soon rescinded and
- 7 Dr. Stone is no longer in that position. But we
- 8 were encouraging CMS to move in that.
- 9 So strategically our focus was to
- 10 work with CMS, to work with the government, to
- 11 have equitable payment across all payor types.
- 12 We did not want an economic advantage anywhere in
- 13 the marketplace.
- 14 Q. Explain to me why OBI began to
- 15 emphasize the lower cost of the product, and how
- 16 they did it.
- A. Well, as I mentioned before, we could
- 18 not win a discounting war. Okay? We did not
- 19 want to compete based on price.
- When Aranesp was introduced in
- 21 Europe, the reimbursement system there
- 22 established a conversion ratio of 200 to 1, that

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1	200 units of Procrit would equal 1 microgram of
2	Aranesp. The pricing in Europe was different
3	than the pricing in the U.S. for Aranesp.
4	And so we were recommending that CMS
5	consider the same conversion ratio.
6	In fact, the promotional materials
7	for Aranesp in Europe were at a ratio of 200 to
8	1. We showed those materials to CMS. We tried
9	to demonstrate exactly how many units you needed
10	to get a response in hemoglobin in, and what
11	would be a similar response with Aranesp in
12	establishing a conversion ratio.
13	CMS reviewed the documents that Amgen
14	had submitted to the FDA. In fact, some of the
15	original nephrology documents by the FDA reviewer
16	said the conversion ratio was 260 to 1, very
17	close to the conversion ratio established in
18	Europe at 200 to 1.
19	In fact, when equitable payment was
20	introduced in the hospital and marketplace, that
21	is the ratio that CMS used.
22	We also used the approved dosing in

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- 1 the Aranesp package insert to look at how many
- 2 units were necessary for one week, get a response
- 3 according to label, and compare it label to
- 4 label, and label to the most commonly used dose
- 5 to establish conversion ratio.
- Again, we were asking for a
- 7 conversion ratio of 200 to 1. They had initially
- 8 established a conversion ratio of 260 to 1.
- 9 We had met with them year after year
- 10 to discuss this. In fact, the second year they
- 11 changed the conversion ratio from 260 to 1 to 330
- 12 to 1, and in this last year they kept it at 330
- 13 to 1.
- Q. What did the dosage -- how did that
- 15 factor into this, the dosage sizes?
- 16 A. How did it factor into it? Frequency
- of dosing or the dosing?
- 18 Q. The frequency of dosing.
- 19 A. Well, their original package insert
- was 2.25 micrograms per kilogram, and if you took
- 21 the average weight of an oncology patient, and
- 22 multiplied it by 2.25 micrograms, it came to

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313 1 don't mind. 2 0. Okay, sure. 3 (Witness reviews document.) 4 Α. Okav. 5 0. And again, it says here Ms. Piech is the executive director of health economics and 6 7 pricing for PGSM. 8 Α. Yes. 9 0. We talked about Ms. Piech earlier. 10 In this document at the top she says, in the 11 second line in parenthesis, "I'm not sure how a 12 survey of wholesalers could produce a higher spread, since branded companies typically set and 13 14 publish, provide their WACs and AWPs." Do you 15 see that? 16 Α. Yes, I do. 17 And that's consistent with your 0. 18 earlier testimony, isn't that true? 19 Α. That's correct. 20 How often did you interact with Ο. 21 Ms. Piech? 22 Α. At that point in time not very

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1	frequently.	
2	Q.	Since then do you do it more
3	frequently?	
4	Α.	Yes.
5	Q.	Why is that?
6	Α.	Because she moved from PGSM to
7	Ortho Biote	ch.
8	Q.	What is her position at
9	Ortho Biote	ch?
10	Α.	As I had testified earlier, she's in
11	clinical ou	tcomes.
12		MR. HOFFMAN: Okay. I have no
13	further que	stions.
14	EXAMINATION	BY
15	MR. SCHAU:	
16	Q.	Mr. Pearson, in honor of your
17	forthcoming	retirement, I'll ask you very few
18	questions.	
19		Procrit was launched in 1991; is that
20	right?	
21	Α.	That's correct.
22	Q.	From the time that Procrit was
	~	

Henderson Legal / Spherion (202) 220-4158

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1	launched through to date, has OBI ever had a	
2	policy of allowing its sales representatives to	
3	promote Procrit based on profit potential or	
4	margin?	
5	A. No.	
6	Q. Is the same true for Sporanox,	
7	Duragesic and Leustatin?	
8	A. Yes.	
9	Q. From the time that OBI first	
10	developed a policy regarding reimbursement and	
11	the discussion of reimbursement, has that policy	
12	always been that Ortho Biotech's sales	
13	representatives were prohibited from promoting	
14	Procrit based on profit potential or margin?	
15	MR. HOFFMAN: Objection.	
16	A. Yes.	
17	Q. Is that also true of Sporanox,	
18	Duragesic and Leustatin?	
19	A. Yes.	
20	Q. Why are physicians interested in	
21	reimbursement?	
22	A. Because physicians want to ensure	
	<b>,</b>	

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     that they don't lose money when they utilize a
 1
     product.
 2
 3
                  MR. SCHAU: That's all I have.
                                                     Thank
 4
     you.
 5
                  MR. HOFFMAN: No further questions.
 6
                  (Whereupon, at 4:33 p.m., the
 7
     deposition was concluded.)
 8
 9
10
11
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